IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.8841 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS & LEGAL REPRESENTATIVE OF DCD.JASHODABEN M MEHTA.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8841 of 2004

MR AJ PATEL for Petitioner No. 1-3

MR NAGESH SOOD, AGP for Respondent Nos. 1-2

MR SHITAL R PATEL for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 05/08/2004

ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 and 2 and Mr.Shital R. Patel, learned advocate, appears and waives service of rule on behalf of respondent Nos.3. With the consent of the respective parties, the matter is

taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the judgement and order dated 14-10-2003 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.BA-851/1996 dismissing the same and confirming the order dated 30-06-1994 passed by the Dy. Collector (Land Reform) Appeal, Gandhinagar in Tenancy Appeal No.19 of 1994 and also the order passed by the Mamlatdar & ALT dated 01-02-1994 in Tenancy Case No.211 of 1993 in not allowing the petitioners to restore the position which was prevailing prior to transaction.

3. The petitioners and deceased Jashodaben were the owners of the land bearing Survey No.17/2 situated at Village Zundal, Taluka - District Gandhinagar. That the deceased - Jashodaben executed an Agreement to Sale in favour of the father of respondent No.3 on 30-07-1988. It is the contention of the petitioners that since father of respondent No.3 was non-agriculturist, possession of the land was agreed to be continued with the petitioners and deceased - Jashodaben till a registered Sale Deed was executed after obtaining necessary permission. However, it seems that in the Agreement to Sale itself it is stated that the position was handed over to the father of respondent No.3. It seems that the Mamlatdar & ALT, Gandhinagar was of the opinion that by the aforesaid transaction there is a breach of provisions of Section 84C(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act'), after a period of 6 years of transaction initiated proceedings on 12-01-1994. A show-cause notice came to be issued and proceedings under Section 84C of the Act came to be initiated. After hearing all the concerned parties, the Mamlatdar & ALT, Gandhinagar passed an order on 01-02-1994 under Section 84C of the Act and directed that the land be fortified and confiscated to the government free from all encumbrances. However, the Mamlatdar also passed an order reserving the liberty to the parties to the said transaction to restore the land to its original position within 90 days from the date of intimation of the said order and further passed an order that if the position is restored then the order regarding confiscation would not be implemented.

4. It seems that respondent No.3 preferred an appeal before the Dy. Collector (Land Reforms) Appeals, Gandhinagar being Tenancy Appeal No.19 of 1994 challenging the order passed by the Mamlatdar, Gandhinagar, which came to be dismissed by judgment and

dated 30-06-1994. Thereafter, against the said order, the petitioners preferred a revision application before the Gujarat Revenue Tribunal being Revision Application No.TEN.BA-851 of 1996. During the course of the said revision application a joint application was submitted by the petitioners as well as respondent No.3 herein that they are ready and willing to restore the position which was prevailing prior to the transaction as per the order passed by the Mamlatdar and, therefore, requested to allow them to restore the position. The Gujarat Revenue Tribunal dismissed the Application by holding that opportunity was given to the parties by the Mamlatdar which was not availed of by the parties at the relevant time. Being aggrieved and dissatisfied with the said order the present petition has been preferred.

5. Mr.A.J.Patel, learned advocate appearing on behalf of the petitioners, has vehemently submitted that in view of the joint pursis given by the parties, the Gujarat Revenue Tribunal ought to have remanded the matter to the Mamlatdar and ALT for restoration of status-quo ante in respect of the land in question. Mr.Patel further submitted that merely because of the order of the Mamlatdar came to be challenged on merits his right of restoring the status-quo in respect of the land in question would not be defeated. He has relied upon the judgment dated 04-05-2000 rendered by the Division Bench of this Court (Coram : J.M.Panchal & A.M.Kapadia, JJ) in Letters Patent Appeal No.232 of 1998 in Special Civil Application No.12548 of 1994 wherein an identical situation, this Court has remanded the matter to the Mamlatdar and ALT for the purpose of restoring the status-quo ante in respect of the land in question within 90 days. Mr.Patel further submitted that in fact the Mamlatdar has exercised powers after unreasonable time. He has relied upon judgment of the Hon'ble Supreme Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, (1997) 6 SCC 71.

6. Mr.Nagesh Sood, learned AGP appearing on behalf of the respondent Nos.1 and 2, has tried to support the order passed by the Gujarat Revenue Tribunal. He has submitted that in fact the Mamlatdar and ALT while passing the order on 01-02-1994 has already given an opportunity to the parties to restore the position and maintain status-quo ante but that opportunity was not availed of by the parties and now, having lost before the Gujarat Revenue Tribunal, such a request is made which is rightly rejected by the Gujarat Revenue Tribunal and, therefore, Mr.Sood requested to dismiss the present petition.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. In view of the fact that the parties have requested and agreed for restoration of the status-quo ante, I am not going into the legality and validity of the order passed by the Mamlatdar and initiation of proceedings after a period of four years and the present petition is confined only with regard to restoration of the status-quo ante. The Mamlatdar while passing the order had given an opportunity to the petitioners and respondent No.3 to restore the status-quo ante. However, initially the said order was challenged by respondent No.3 before the Dy. Collector and thereafter by the petitioners before the Gujarat Revenue Tribunal on merits. That was the statutory right available to the parties. Having lost on merits it is certainly open for the petitioners to now request for restoration of status-quo ante. The Division Bench of this Court in the aforesaid LPA has considered the said aspect and remanded the matter to the Mamlatdar and ALT so that the parties can restore the status-quo ante in respect of the land in question.

9. Considering the aforesaid judgment passed in LPA No.232 of 1998 and the reasons given therein the present petition succeeds. The judgment and order passed by the Gujarat Revenue Tribunal in refusing to accept the application submitted by the parties for restoration of status-quo ante is quashed and set aside. The matter is remanded to the Mamlatdar & ALT, Gandhinagar, before whom the parties would be entitled to restore the status-quo ante in respect of the land in question within 90 days from the date of receipt of the writ. If the parties bring the disputed land in its original position before the Mamlatdar & ALT, Gandhinagar within 90 days from the date of receipt of the writ, order dated 01-02-1994 directing that the land shall vest without any encumbrances to the State Government, shall not be implemented.

10. The petition stands allowed accordingly. Rule made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'